

IC 27-16-7

Chapter 7. General Requirements and Provisions

IC 27-16-7-1

Requirements of co-employment relationships

Sec. 1. Except as provided in a professional employer agreement, the following apply to a co-employment relationship:

(1) The client:

(A) may exercise and enforce all rights; and

(B) is obligated to perform all duties and responsibilities;

that otherwise apply to an employer in an employment relationship, that are allocated to the client by the professional employer agreement and this article, and that are not specifically allocated to the PEO by the professional employer agreement and this article.

(2) The PEO:

(A) may exercise and enforce only the rights; and

(B) is obligated to perform only the duties and responsibilities;

that are required of the PEO or specifically allocated to the PEO by this article and the professional employer agreement.

(3) Unless otherwise expressly agreed by the PEO and the client in the professional employer agreement, the client retains the exclusive right to direct and control the covered employees as necessary to:

(A) conduct the client's business;

(B) discharge the client's fiduciary responsibilities; or

(C) comply with licensure requirements that apply to the client or the covered employees.

As added by P.L.245-2005, SEC.7.

IC 27-16-7-2

Professional employer agreement contents

Sec. 2. (a) Except as provided in this article, the co-employment relationship between a client and a PEO, and between a co-employer and a covered employee, is governed by the professional employer agreement.

(b) A professional employer agreement must specify the following:

(1) The allocation of rights, duties, and responsibilities described in section 1 of this chapter.

(2) Except as provided in subsection (c), that the PEO is responsible for:

(A) payment of wages to covered employees;

(B) withholding, collection, reporting, and remittance of payroll related and unemployment taxes; and

(C) to the extent the PEO has assumed responsibility in the professional employer agreement, making payments for employee benefits for covered employees.

(3) The allocation, to either the client or the PEO, of the

responsibility to obtain worker's compensation coverage for covered employees from a worker's compensation insurer that is authorized under this title to conduct the business of insurance in Indiana.

(4) If the professional employer agreement allocates the responsibility under subdivision (3) to the PEO, a requirement that the PEO maintain and provide to the client, at the client's request at the termination of the professional employer agreement, records regarding loss experience related to the worker's compensation insurance coverage.

(c) A PEO is not responsible for an obligation between a client and a covered employee for payments in addition to the covered employee's salary, draw, or regular rate of pay, including bonuses, commissions, severance pay, deferred compensation, profit sharing, or vacation, sick, or other paid time off, unless the PEO has expressly agreed to assume liability for the payments in the professional employer agreement.

As added by P.L.245-2005, SEC.7.

IC 27-16-7-3

Notice to affected employees

Sec. 3. A PEO shall provide written notice to each covered employee who is affected by a professional employer agreement entered into by the PEO concerning the general nature of the co-employment relationship between and among the PEO, the client, and the covered employee.

As added by P.L.245-2005, SEC.7.

IC 27-16-7-4

Responsibilities of clients, PEOs, and covered employees

Sec. 4. (a) Except as expressly provided by the professional employer agreement:

(1) a client:

(A) is solely responsible for:

(i) the quality, adequacy, or safety of goods or services produced or sold in the client's business;

(ii) directing, supervising, training, and controlling the work of a covered employee with respect to the business activities of the client; and

(iii) the acts, errors, or omissions of a covered employee with respect to activities described in item (ii); and

(B) is not liable for the acts, errors, or omissions of:

(i) the PEO; or

(ii) a covered employee of the client and a PEO when the covered employee is acting under the express direction and control of the PEO.

(2) A PEO is not liable for the acts, errors, or omissions of a client or a covered employee of the client when the covered employee is acting under the express direction and control of the client.

(3) A covered employee is not, solely as the result of being a covered employee of a PEO, an employee of the PEO for purposes of:

- (A) general liability insurance;
- (B) fidelity bonds;
- (C) surety bonds;
- (D) employer's liability that is not covered by worker's compensation; or
- (E) liquor liability insurance;

carried by the PEO unless the covered employee is specified as an employee of the PEO by specific reference in the professional employer agreement and any applicable prearranged employment contract, insurance contract, or bond.

(b) This section does not limit:

- (1) a contractual liability or obligation specified in a professional employer agreement; or
- (2) the liabilities and obligations of a PEO or client as specified in this article.

As added by P.L.245-2005, SEC.7.

IC 27-16-7-5

PEO not engaged in business of insurance

Sec. 5. A PEO that offers, markets, sells, administers, or provides professional employer services under a professional employer agreement as provided in this article is not:

- (1) engaged in the business of insurance; or
- (2) acting as an administrator (as defined in IC 27-1-25-1).

As added by P.L.245-2005, SEC.7.

IC 27-16-7-6

Basis of fees or taxes on PEOs

Sec. 6. (a) A business license fee or another fee that is based upon gross receipts must, in the case of a PEO, be based upon the administrative fee of the PEO.

(b) A tax assessed on a per capita or per employee basis must be assessed against a:

- (1) client for covered employees; and
- (2) PEO for the PEO's employees who are not covered employees.

(c) In the case of tax imposed or calculated upon the basis of total payroll, a PEO is eligible to apply a small business allowance or exemption available to the client for covered employees for the purpose of computing the tax.

As added by P.L.245-2005, SEC.7.